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09/930,398	08/15/2001	Christine Carlucci	262.802	1023
37004	7590	08/07/2007		
POWER DEL VALLE LLP 233 WEST 72 STREET NEW YORK, NY 10023			EXAMINER EREZO, DARWIN P	
			ART UNIT 3731	PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/930,398
Filing Date: August 15, 2001
Appellant(s): CARLUCCI ET AL.

**MAILED
AUG 07 2007
GROUP 3700**

Marguerite Del Valle
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed April 26, 2007 appealing from the Office
action mailed July 11, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,117,510	BROUSSARD et al.	06-1992
5,305,470	MCKAY	04-1994

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(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-14 are rejected under 35 U.S.C. 102(b) as being anticipated by US 5,117,510 to Broussard et al. and as evidenced by US 5,305,470 to McKay.

(claim 1) Broussard teaches a device capable of securing medical tubing to a body comprising a circular one-piece fabric band **10**, wherein the band is divided into at least a first closed loop (the main opening of headband **10**) adapted to fit elastically around a portion of the body (Fig. 3) and a second closed loop (either of **18,19,20,21**) such that the band is composed of no more than two layers of fabric anywhere along the length, and wherein the first loop is an elastic headband comprised of terry cloth and the second loop is capable of receiving and holding a medical tubing. It is inherent that a headband made of terry cloth is elastic in order for the headband to fit varying head sizes, as evidenced by US 5,305,470 (col. 3, lines 42-46).

(claim 2) Broussard teaches an elastic headband.

(claim 3) Broussard teaches the fabric band comprising non-irritating material, such as terry cloth.

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(claim 4) Broussard teaches the fabric band lined with friction creating material. Terry cloth is non-irritating but is also covered with loops, such as in a towel, in order to absorb sweat. The loops would provide friction.

(claim 5) Broussard teaches the loops formed from stitching (stitching 13 for the first loop and buttonhole stitching for loops 18,19,20,21, as seen in col. 2, line 45-47).

(claims 6, 10 and 11) Broussard teaches a device capable of securing medical tubing to a body comprising a circular one-piece fabric band **10**, wherein the band is divided into at least a first closed loop (the main opening of headband **10**) adapted to fit elastically around a portion of the body (Fig. 3), a second closed loop (either of **18,19**) and a third loop (either of **20,21**) such that the band is composed of no more than two layers of fabric anywhere along the length, and wherein the first loop is an elastic headband comprised of terry cloth and the second and third loop are capable of receiving and holding a medical tubing.

(claims 7 and 12) Broussard teaches an elastic headband.

(claims 8 and 13) Broussard teaches the fabric band comprising non-irritating material, such as terry cloth.

(claims 9 and 14) Broussard teaches the fabric band lined with friction creating material. Terry cloth is non-irritating but is also covered with loops, such as in a towel, in order to absorb sweat. The loops would provide friction.

(10) Response to Argument

The appellants argued that Broussard fails to disclose a band that is divided into at least a first closed loop and a second closed loop. It was argued that the term “divided into” should be defined according to the written the specification, which is “joining two points along the width of the band, such as by stitching or some other non-disengagable fastening technique” (page 5 of the appeal brief). However, this is not persuasive because the limitation “divided into” merely describes that the band comprises two loops. The limitation does not specify how the band is divided. Furthermore, the features upon which the appellants rely (i.e., stitching) are not recited in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Moreover, the limitation “divided into” is not defined by the appellants in the specification with reasonable clarity, deliberateness, and precision. Instead, the specification merely states that the “loop 14 can be formed by joining two points” (page 4, lines 18-19). It does not clearly state that it has to be formed by this process.

The appellant also provided the same argument regarding the limitation of a “loop”. It was argued that said limitation should be limited to the definition provided in the specification, which is “a gathered portion of the fabric band”. However, even this definition does not overcome the loop that is defined by Broussard in Figs. 3 and 4. The portion of the band that circumferentially surrounds the user’s head could easily be referred to as a “gathered portion” since the phrase “gathered portion” does not

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specifically convey any specific type of structure or arrangement. That is, the portion of the device of Broussard that surrounds the head could be referred to as being "gathered together", while the portion that surrounds the tubular structure would be another gathered portion. However, when treating the claims on the merits, the Examiner has given the phrase "loop" its broadest reasonable interpretation, which is something that is ring-like. Again, as seen in Figs. 3 and 4, the band has a ring-like structure that wraps around the user's head and another ring-like structure that is fully capable of securing any tubular structure of similar size and dimension.

It is also noted that the Declarations included with the Appeal Brief were previously submitted by the Applicant on May 16, 2005. However, the content of the Declarations does not overcome the anticipation rejections.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

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For the above reasons, it is believed that the rejections should be sustained.

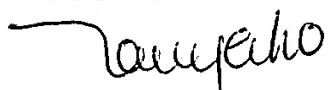
Respectfully submitted,

Darwin Erez

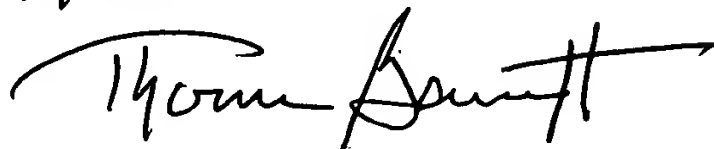
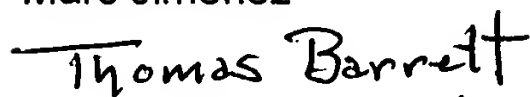


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TQAS TC 3700